

REMARKS

Claims 14-26 are selected for prosecution.

To more clearly define the claimed invention, claim 14 has been amended to recite that each evaluation mark is in a range from a lower mark to a higher mark.

Also, new claim 31 dependent from claim 14 has been added to further define the claimed invention. Claim 31 recites the step of selecting a threshold of evaluation marks acceptable for the customer, and indicates that the pre-selected group of items has the evaluation marks higher than the threshold.

Claims 14-20, 22 and 24-26 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. in view of Gazzuolo. Claims 21 and 23 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey Jr. et al. in view of Gazzuolo and further in view of Weaver.

Claim 14, as amended, recites a method of selling goods, comprising the steps of:

- selecting human models representing categories of a pre-set classification of goods,
- trying on the goods by the human models of the respective categories, at least one model is assigned for trying on goods that belong to a category of the classification,
- obtaining body measurements of a customer to determine to which category in a pre-set classification of goods the customer belongs,
- based on the body measurements, assigning by a computer system to the customer the category that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer,
- determining by the computer system quantitative evaluation marks for the goods in the category assigned to the customer, each evaluation mark being in a range from a lower mark to a

higher mark, the evaluation marks being pre-set based on evaluating the goods tried on by the respective model,

-pre-selecting by the computer system based on the determined evaluation marks, a group of items among the goods in the category assigned to the customer, and
-enabling the customer to access said group of items.

The Examiner holds Bailey Jr. to differ from the claimed invention in that the reference does not disclose that the evaluation marks are quantitative and are pre-set based on evaluating the goods tried by models.

Gazzuolo is relied upon for disclosing the quantitative evaluation marks.

Considering the reference, Gazzuolo discloses maintaining a database of mathematical body scan fit models. Based on customer's body measurements, several body scan fit models are selected for each customer. When the customer selects a body scan fit model, she virtually tries-on the garments she brought with her. The recommended size and fit analysis of the garment are then displayed (see col. 12, lines 40-65).

Accordingly, the reference does not suggest determining quantitative evaluation marks for the goods in the category assigned to the customer, where each evaluation mark is in a range from a lower mark to a higher mark, as the amended claim 14 requires.

Further, Gazzuolo does not suggest that the evaluation marks are pre-set based on evaluating the goods tried on by the respective human model (selected based on the customer's body measurements). Instead, the reference suggests evaluating garments when the customer virtually tries them on.

Hence, Gazzuolo expressly **teach away** from the claimed invention, thereby constituting further evidence of nonobviousness. *In re Bell*, 991 F.2d 781, 26 USPQ2d 1529 (Fed. Cir.

1993); *In re Hedges*, 783 F.2d 1038, 228 USPQ 685 (Fed. Cir. 1986); *In re Marshall*, 578 F.2d 301, 198 USPQ 344 (CCPA 1978).

Moreover, it is respectfully submitted that neither Bailey nor Gazzuolo teaches or suggests the step of assigning to the customer, based on the body measurements, the category that corresponds to a human model having individual characteristics corresponding to the body measurements of the customer.

It is noted that this language was suggested by the Examiner during the August 23, 2005 telephone conference to more clearly define the claimed invention over Bailey.

By contrast, Bailey discloses that “having selecting some clothes, the customer is asked to make choices about materials, colors, style options, and body measurements. Based on this data, the resulting garment is presented for inspection on an appropriately proportioned computer generated model. If the customer finds the garment acceptable, he or she initiates the purchase...” (the first full paragraph on page 7).

Further, the Examiner has apparently failed to give adequate consideration to the particular problems and solution addressed by the claimed invention. *Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 15 USPQ2d 1321 (Fed. Cir. 1990); *In re Rothermel*, 276 F.2d 393, 125 USPQ 328 (CCPA 1960). Specifically, as discussed on page 2 of the specification, in conventional systems, customers have to choose among hundreds of articles corresponding to a particular size. As a result, Internet-based clothes shopping becomes slow and cumbersome. The claimed invention suggests addressing this problem by pre-selecting for each customer a small group of items based on the evaluation marks (in a range from a lower mark to a higher mark) determined when articles are tried-on by a human model having individual characteristics corresponding to the body measurements of the customer.

The references of record address neither the problem nor the solution addressed by the claimed invention. Accordingly, the claimed invention cannot be found obvious based on the applied references.

Newly added claim 31 dependent from claim 14 further recites the step of selecting a threshold of evaluation marks acceptable for the customer, and specifies that the pre-selected group of items has the evaluation marks higher than the threshold.

The prior art does not teach or suggest these features.

Accordingly, claims 14-26 and 31 are defined over the prior art combination applied by the Examiner.

In view of the foregoing, and in summary, claims 14-26 and 31 are considered to be in condition for allowance. Favorable reconsideration of this application, as amended, is respectfully requested.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP



Alexander V. Yampolsky
Registration No. 36,324

600 13th Street, N.W.
Washington, DC 20005-3096
Phone: 202.756.8000 AVY:apr
Facsimile: 202.756.8087
Date: March 13, 2006

**Please recognize our Customer No. 20277
as our correspondence address.**